

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOEL P. ALCARMEN,

No. C-09-0853 EMC

Plaintiff,

v.

**ORDER REMANDING CASE TO STATE
COURT**

CITIBANK N.A., *et al.*,

(Docket No. 5)

Defendants.

Plaintiff Joel P. Alcarmen has filed suit against Defendants Citibank, N.A. (as trustee for WaMu Series 2007-HE3 Trust), Washington Mutual, and California Reconveyance Company (“CRC”), seeking, in essence, invalidation of a trustee’s sale of certain real property. Currently pending before the Court is Defendants’ motion to dismiss. Prior to the hearing on Defendants’ motion, the Court asked the parties for supplemental briefing on whether there was subject matter jurisdiction over the case, which Defendants had removed from state to federal court. Having considered those supplemental papers, as well as the oral argument of counsel and all other evidence of record, the Court hereby finds that subject matter jurisdiction is lacking and therefore **REMANDS** the case to state court. Because the Court is remanding the case for lack of subject matter jurisdiction, it does not entertain the merits of Defendants’ motion to dismiss.

I. FACTUAL & PROCEDURAL BACKGROUND

In his complaint, Mr. Alcarmen alleges as follows. In or about March 2007, Washington Mutual loaned Mr. Alcarmen \$603,000 in order for him to purchase certain real property located in Hayward, California. *See* Compl. ¶¶ 2, 13. Mr. Alcarmen was not given certain disclosures about his loan rate, as required by state law. *See* Compl. ¶ 14 (referring to Cal. Civ. Code § 1916.7(c)). In

1 addition, Mr. Alcarmen did not receive, within one day of the close of escrow, a HUD-1 Settlement
2 Statement, as required by federal law. *See* Compl. ¶ 15. Finally, the Truth in Lending Statement
3 that Mr. Alcarmen did receive understated the finance charge on the loan by over \$15,000. *See*
4 Compl. ¶ 16.

5 According to Mr. Alcarmen, because of Defendants' "failure to disclose the true cost of the
6 loan, [he] defaulted on the loan." Compl. ¶ 17. Thereafter, in November 2007, Defendants had a
7 Notice of Default recorded with the Alameda County Recorder's Office. *See* Compl. ¶ 17. The
8 Notice of Default did not include a declaration that there had been a diligent attempt to contact the
9 borrower or that the borrower had surrendered the property. *See* Compl. ¶ 18.

10 Subsequently, a Notice of Trustee Sale was recorded with the Recorder's Office. *See* Compl.
11 ¶ 17. The Notice was required, under California law, to provide "either a toll-free telephone number
12 or telephone number in this state of the trustee [for the deed of trust]," Cal. Civ. Code § 2924f(b)(1),
13 but, according to Mr. Alcarmen, did not do so. Had it done so, then Mr. Alcarmen "could have
14 contacted the Trustee to try to work out a reinstatement." Compl. ¶ 20.

15 Ultimately, a trustee's sale took place on July 2, 2008. *See* Compl. ¶ 21. Apparently, the
16 property was purchased by Citibank, with a trustee's deed upon sale being executed by CRC to
17 Citibank. *See* Compl. ¶ 21. A Notice of Assignment was recorded on July 9, 2008, assigning the
18 deed of trust. *See* Compl. ¶ 22. On July 13, 2008, a process server gave notice to the occupants of
19 the property that they were to vacate the premises. *See* Compl. ¶ 23. Subsequently, on September
20 25, 2008, Citibank filed an unlawful detainer action against Mr. Alcarmen. That suit is still pending.
21 *See* Compl. ¶ 24.

22 Based on the above allegations, Mr. Alcarmen filed a complaint in state court, asserting
23 claims for declaratory relief, conspiracy, breach of the covenant of good faith and fair dealing, fraud,
24 unfair business practices, unjust enrichment, breach of fiduciary duty, setting aside the trustee's sale,
25 canceling the trustee's deed, and quiet title. All of these claims are state law claims. However, two
26 of the claims -- *i.e.*, the unfair business practices claim and unjust enrichment claim -- make
27 reference to federal law. More specifically, in the unfair business practices claim (asserted against
28 Washington Mutual only), Mr. Alcarmen alleges that Washington Mutual misrepresented "the true

1 amount of the prepaid finance charges by providing an inaccurate final TILA [*i.e.*, Truth in Lending
 2 Act] disclosure.” Compl. ¶ 54. In the unjust enrichment claim (asserted against all Defendants), Mr.
 3 Alcarmen alleges that, because Washington Mutual violated TILA, “a right of rescission pursuant to
 4 TILA . . . is available to [him],” Compl. ¶ 57, and the rescission makes the monthly mortgage
 5 payments, as well as the eventual gain of the property after foreclosure, an unjust enrichment. *See*
 6 Compl. ¶ 58.

7 After being served with the complaint, Defendants removed the case to federal court,
 8 claiming that there is federal question jurisdiction, *see* Docket No. 1 (notice of removal), and, soon
 9 after removing the case, Defendants filed their currently pending motion to dismiss. Subsequently,
 10 the Court requested that the parties file supplemental briefing addressing the issue of whether it has
 11 subject matter jurisdiction over the case.

12 II. DISCUSSION

13 The Court may not entertain Defendants’ motion to dismiss unless there is subject matter
 14 jurisdiction in the instant case. As stated above, and as reflected in their notice of removal,
 15 Defendants claim that there is federal question jurisdiction. *See* 28 U.S.C. § 1331 (“The district
 16 courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or
 17 treaties of the United States.”). More specifically, Defendants claim that “[t]he action arises from
 18 the laws of the United States, because in the Complaint, Plaintiff alleges violation of the Truth in
 19 Lending Act [and] Regulation Z.” Docket No. 1 (Not. ¶ 4). Defendants refer specifically to pages
 20 10 and 11 of the complaint. These pages cover the claims for unfair business practices and unjust
 21 enrichment.

22 The Supreme Court has held that a case “arises under” federal law for § 1331 purposes when
 23 federal law either (1) creates the cause of action or (2) the plaintiff’s right to relief necessarily
 24 depends on resolution of a substantial question of federal law. *See Franchise Tax Bd. v. Constr.*
 25 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983). The reasoning underlying the second category
 26 of cases is that, if there is a substantial question of federal law, then it is appropriate to “resort to the
 27 experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Grable*
 28 *& Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005). In

1 *Grable*, however, the Supreme Court indicated that even a substantial question of federal law does
2 not necessarily require a finding of subject matter jurisdiction. Instead, the Court framed the issue
3 as follows: “[T]he question is, does a state-law claim necessarily raise a stated federal issue, actually
4 disputed and substantial, which a federal forum may entertain without disturbing any
5 congressionally approved balance of federal and state judicial responsibilities.” *Id.* at 314 (emphasis
6 added).

7 There is no dispute that the instant case does not fall under the first category of cases -- the
8 claims for unfair business practices and unjust enrichment are clearly created by state law, not
9 federal. The question is whether this case falls under the second category -- *i.e.*, whether Mr.
10 Alcarmen’s right to relief for the unfair business practices and unjust enrichment claims depends on
11 resolution of a substantial question of federal law.

12 The Court agrees with Defendants that a question of federal law is clearly implicated by the
13 claims for unfair business practices and unjust enrichment. Both of these claims are predicated on
14 there being a violation of TILA, a federal statute. However, “the mere presence of a federal issue in
15 a state cause of action does not automatically confer federal-question jurisdiction.” *Merrell Dow*
16 *Pharm., Inc. v. Thompson*, 478 U.S. 804, 813 (1986). There must be a *substantial* federal question.
17 In *Empire HealthChoice Assurance, Inc. v. McVeigh*, 547 U.S. 677 (2006), the Supreme Court
18 indicated that a substantial federal question would be at issue if resolution of the federal question
19 would both be (1) dispositive of the case and (2) controlling in numerous other cases.¹ *See id.* at
20 700. Thus, for example, in *Grable*, there was a substantial federal question because (1) it appeared
21 that the only issue contested in the case was the federal question of whether the IRS had complied
22 with a federal statute and (2) the federal question “presented a nearly ‘pure issue of law,’ one ‘that
23 could be settled once and for all and thereafter would govern numerous tax sale cases.’” *Id.* at 700.

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25 ¹ *See also Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 570 (6th Cir. 2007) (stating that
26 “four aspects of a case or an issue . . . affect the substantiality of the federal interest in that case or issue:
27 (1) whether the case includes a federal agency, and particularly, whether that agency’s compliance with
28 the federal statute is in dispute; (2) whether the federal question is important (*i.e.*, not trivial); (3)
whether a decision on the federal question will resolve the case (*i.e.*, the federal question is not merely
incidental to the outcome); and (4) whether a decision as to the federal question will control numerous
other cases (*i.e.*, the issue is not anomalous or isolated)”).

1 Where a case is “fact-bound and situation specific,” a substantial federal question is less likely to be
2 found. *Id.* at 701 (noting that plan administrator’s reimbursement claim was “fact-bound and
3 situation specific”; ultimately concluding that there was no federal question jurisdiction over the
4 claim); *see also Potter v. Hughes*, 546 F.3d 1051, 1065 (9th Cir. 2008) (noting that, “[i]n *Grable*, the
5 [Supreme] Court determined it had federal question jurisdiction over a state claim where ‘the
6 meaning of the federal statute’ was an essential element of a state quiet title action”); *In re*
7 *Countrywide Fin. Corp. Mortg. Marketing & Sales Practices Litig.*, Nos. 08md1988 DMS (LSP),
8 08cv1903 DMS (LSP), 2008 U.S. Dist. LEXIS 105440, at *19 (S.D. Cal. Dec. 30, 2008)
9 (concluding that there was no substantial federal issue because, *inter alia*, “[t]here is no dispute
10 about the meaning or construction of any federal statute”); *Finch v. Wisconsin Auto Title Loans*,
11 *Inc.*, 586 F. Supp. 2d 1070, 1076 (W.D. Wis. 2008) (stating that “[a] substantial federal question is
12 not present when the federal issue is ‘fact-bound and situation-specific’”).

13 In the instant case, Defendants have failed to show that resolution of the federal question in
14 this case would be controlling in numerous other cases. Mr. Alcarmen simply claims that he was
15 provided an inaccurate TILA disclosure because it did not disclose “the true amount of the prepaid
16 finance charges.” Compl. ¶ 54. This presents a fact intensive question peculiar to this instant case.
17 This will not require the Court to interpret or construe TILA in any significant way or to otherwise
18 resolve a nearly pure issue of law. Notably, at least one district court has concluded that there is “no
19 substantial issue of TILA interpretation” where a plaintiff’s claim is predicated on TILA’s requiring
20 an accurate disclosure of the finance charge and APR. *Finch*, 586 F. Supp. 2d at 1076 (noting that
21 “defendant could not seriously dispute that, as plaintiff alleges, TILA requires the accurate
22 disclosure of the finance charge and APR” and so “this case presents no substantial issue of TILA
23 interpretation”).

24 At the hearing, Defendants argued for the first time that there was a legal question that the
25 Court would have to resolve which would have bearing on numerous other cases -- *i.e.*, whether a
26 plaintiff is entitled to rescind under TILA when the property at issue has already been sold (as in this
27 case). This legal question, however, need not be resolved in the case at bar. The legal question that
28 must be resolved in the instant case is only whether TILA has been violated; a court need not decide

1 what remedies are available for a violation of TILA (such as rescission) because the remedies that
2 will be available to Mr. Alcarmen will be dictated by state law, since the causes of action he has pled
3 are state law claims, not TILA claims. *See West 14th Street Commercial Corp. v. 5 West 14th*
4 *Owners Corp.*, 815 F.2d 188, 193 (2d Cir. 1987) (“[The Supreme Court in] *Merrell Dow* held that
5 when Congress has provided no private right of action under a federal statute, the borrowing of that
6 federal law as a standard of conduct in a state created action is not sufficiently substantial to confer
7 federal question jurisdiction.”). The Court acknowledges that, in his unjust enrichment claim, Mr.
8 Alcarmen specifically refers to a right to rescind under TILA, *see* Compl. ¶ 57, but this allegation
9 about rescission is superfluous or unnecessary. If Defendants have been unjustly enriched, then
10 whether or not Mr. Alcarmen has a right to rescind as a remedy under TILA is immaterial; the
11 remedy for the unjust enrichment will be disgorgement of the benefit -- a matter governed by state
12 law. At bottom, as pled, the alleged violation of federal law provides the basis for the alleged
13 wrongful conduct; it does not provide the remedy. Hence, the federal legal question posited by
14 Defendants need not be resolved in the instant case.

15 As a final point, the Court notes that its finding that this case raises no substantial federal
16 question comports with the congressionally approved balance of federal and state judicial
17 responsibilities. *See Grable*, 545 U.S. at 314. Congress has expressly conferred on state courts --
18 not just federal courts -- the authority to entertain TILA claims. *See* 15 U.S.C. § 1640(e) (“Any
19 action under this section may be brought in any United States district court, or in any other court of
20 competent jurisdiction, within one year from the date of the occurrence of the violation.”); *see also*
21 *In re Countrywide Fin. Corp. Mortg. Marketing & Sales Practices Litig.*, 2008 U.S. Dist. LEXIS
22 105440, at *21 (S.D. Cal. Dec. 30, 2008) (noting that “[t]he existence of concurrent jurisdiction
23 [over TILA and RESPA claims] indicates Congress intended for the balance of judicial
24 responsibility for these claims to be shared between state and federal courts”); *cf. Bolden v. KB*
25 *Home*, No. CV 08-02682 DDP (FFMx), 2008 U.S. Dist. LEXIS 65275, at *23 & n.6 (C.D. Cal. July
26 24, 2008) (noting that there were circumstances militating against finding a substantial federal issue
27 – *i.e.*, “the absence of an exclusive federal jurisdiction provision in the FIRREA and where the
28 federal standard here is one written and interpreted entirely by a non-governmental organization, not

1 Congress or federal regulatory agencies”); *Alpert v. Time Warner Cable, Inc.*, No. 08-CV-0582 W
2 (WMC), 2008 U.S. Dist. LEXIS 51623, at *21-22 (S.D. Cal. July 1, 2008) (stating that “Time
3 Warner has not shown that disputes involving cable television billing (unlike federal taxes or tariffs)
4 are within the peculiar expertise of federal courts or automatically trigger exclusive federal
5 jurisdiction.”).

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court remands the case to the state court from which it was
8 removed for lack of subject matter jurisdiction. The Court makes no ruling on the merits of
9 Defendants’ motion to dismiss.

10 This order disposes of Docket No. 5. The Clerk of the Court is directed to close the file in
11 this case.

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13 IT IS SO ORDERED.

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15 Dated: May 13, 2009

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17 EDWARD M. CHEN
18 United States Magistrate Judge
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